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SIPDIS

DEPT FOR EB, IO/T AND OES/IHA
COMMERCE FOR USPTO
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E.O. 12958: N/A

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SUBJECT: NOT A GOOD IDEA - WIPO PROPOSAL ON AVIAN INFLUENZA
AND INTELLECTUAL PROPERTY RIGHTS

1. This is an action message. See paragraph 6.
2. Ambassador Moley met November 1, at her request, with Rita Hayes, Deputy Director General WIPO, to discuss a proposed WIPO-hosted meeting of a high-level advisory group for intellectual property and avian flu. Econ Counselor and Health Attach also joined the meeting.
3. Noting a recent meeting in Washington between WIPO Deputy Director Francis Gurry and Commerce/USPTO officials, Hayes opened the meeting by giving the Ambassador a copy of a memo from Gurry to the WIPO Director General outlining the purposes of the meeting (text emailed to the Department separately). Hayes said DG Idris had approved the proposal in principle but was interested in the U.S. reaction before implementing it.
4. Noting that intellectual property issues were "under scrutiny," Hayes said WIPO wanted to be out in front of the ongoing debate about IP and avian/pandemic influenza. She described the proposed meeting as outreach to member states and other stakeholders. Hayes expressed some concern about whether the mix of countries to be invited was correct (Brazil, China, EU/EC, India, Indonesia, Japan, Russian Federation, South Africa, USA) and whether or not to include the World Health Organization.
5. Ambassador Moley responded that he would need guidance on the WIPO proposal. Reacting informally, he wondered whether such a meeting could avoid providing a platform or target for anti-IP activists. Limiting participation to only a few members states would invite criticism of those excluded, whereas an "open forum" could degenerate into the debates on the role of IP that have dominated recent WIPO meetings. Timing of such a meeting would also be problematic - the crisis has been fast moving and much could have happened by the proposed date of December. However, it would be difficult to organize such a meeting more quickly. While awaiting a U.S. reply, the Ambassador suggested that it would be useful for Director General Idris to seek a briefing from Roche on its plans for dealing with the crisis in order to disseminate accurate, first-hand information to interested parties. Hayes agreed this was a sensible approach and mentioned that WIPO officials would discuss this matter with the World Trade Organization in the next days.
6. Mission requests guidance on responding to Hayes's request for U.S. views on the WIPO proposal, noting that it has strong reservations about its utility of and about WIPO's ability to avoid an undesirable outcome.
Moley